

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W.E. AUBUCHON CO., INC., AUBUCHON
DISTRIBUTION, INC., W.E. AUBUCHON
CO. INC. EMPLOYEE MEDICAL
BENEFIT PLAN, and AUBUCHON
DISTRIBUTION, INC. EMPLOYEE
MEDICAL BENEFIT PLAN,
Plaintiffs,

CIVIL ACTION No.
05-40159 FDS

v.

BENEFIRST, LLC,
Defendant.

Assented to Motion to Extend Fact Discovery For One Month

The Defendant, BeneFirst, LLC ("BeneFirst"), hereby moves the Court for a short extension of the deadline for fact discovery in this case. BeneFirst requests that the deadline for the close of fact discovery, which is currently March 14, 2008, be extended to April 15, 2008, to account for the time demands of a recently rescheduled trial in state court that will commence on March 10, 2008, with jury selection possibly to commence earlier, on March 7. As grounds for this motion, BeneFirst states as follows:

1. Fact discovery in this case is currently scheduled to conclude on March 14, 2008.
2. There are several depositions that BeneFirst currently intends to conduct of the defendants, certain employees and agents of the defendants, and certain third party witnesses. BeneFirst's plan has been to conduct the depositions after production of all documents previously requested from the defendants or from third party witnesses. The final production of such documents is not due until February 28, in accordance with a January 28, 2008 order of Magistrate Judge Hillman, who, after *in camera* inspection, ordered certain documents to be produced within 30 days.

BeneFirst intended to schedule the depositions after production of those documents, and believed that the approximately two weeks available between the final date that those documents were to be produced and the last day of discovery would be sufficient to conduct those depositions. BeneFirst has noticed those depositions.

3. On Wednesday, February 21, however, Judge Troy of Suffolk Superior Court in the Commonwealth of Massachusetts rescheduled a trial for March 10, 2008, and suggested that the parties may be called to pick a jury in advance, on March 7, 2008. Counsel for BeneFirst in this case are also trial counsel for one of the defendants in that case. It is expected that the March 10 trial date is a "firm" date, and it is counsel's understanding that it was assigned specifically to ensure that the trial commences on or about that date.
4. As a result, counsel for BeneFirst is not available to conduct depositions in the current case for at least one full week of the short window of time available between the time that the final documents in this case are scheduled to be produced and the current close of fact discovery, which is March 14.
5. Attempting to conduct the noticed depositions in the instant case in the very small amount of time available poses significant scheduling and other logistical problems, including the need to conduct multiple depositions simultaneously (including, it appears at this point, in multiple states) and the absence of any flexibility for accommodating any witnesses who may have a conflict.
6. In addition, based on conversations with plaintiffs' counsel, BeneFirst's counsel believes that the scheduling difficulties created by the recently scheduled trial will make it difficult to schedule depositions of BeneFirst that the plaintiffs intend to conduct.

7. BeneFirst requests only that the close of fact discovery be moved back approximately four weeks, to the middle of April, to allow some scheduling flexibility and to allow the depositions in question to be conducted after the close of the recently rescheduled state court trial.
8. This brief extension of the fact discovery deadline in this case does not require changing any other deadlines in this case. Rather, the currently pending deadlines for expert discovery and dispositive motions can remain the same and will not be affected by this brief extension.
9. Plaintiffs have assented to this motion.

WHEREFORE, for the reasons detailed above, BeneFirst moves the Court for an order extending the close of fact discovery to April 15, 2008.

Respectfully submitted, this 25th day of February 2008.

for the Defendant

/s/ Stephen Rosenberg

Stephen D. Rosenberg [BBO# 558415]

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Assented to by the Plaintiffs:
for the Plaintiffs

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